

**Serious Defect in Detroit Bankruptcy Filing
Neither Governor Rick Snyder nor Kevyn Orr
Has Standing to Initiate Bankruptcy Proceeding**

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CLERK
U.S. BANKRUPTCY COURT
E.D. MICHIGAN-DETROIT

Honorable Judge Steven W. Rhodes
U.S. Bankruptcy Court for the Eastern District of Michigan,
Southern Division
211 W. Fort Street, Suite 1800
Courtroom 1825
Detroit, MI 48226

I am requesting you docket this letter from a *pro se litigant* as a pleading pursuant to language on your chamber's website that states: "Letters to the Judge from *pro se* litigants may, at the Judge's discretion, be treated as pleadings and docketed as such."

I am requesting the court resolve the following questions to determine if Detroit Emergency Manager (EM) Kevyn Orr and Michigan Governor Rick Snyder have the legal right to bring a bankruptcy action on behalf of the City of Detroit, Michigan, before the U.S. Bankruptcy Court for the Eastern District of Michigan:

1. Do Michigan Governor Rick Snyder and his agent Emergency Manager Kevyn Orr have legal standing to initiate a bankruptcy action on behalf of the City of Detroit, since neither was elected to represent the City of Detroit, a body corporate?
2. Is the Bankruptcy Court bound to postpone bankruptcy proceeding until the constitutionality of Michigan Public Act 436 (PA436)—Local Financial Stability and Choice Act—is determined by a court of proper jurisdiction so the question of legal standing as it pertains to EM Orr and Governor Snyder can be properly considered and resolved?

Do Michigan Governor Rick Snyder and Kevyn Orr—neither of whom is an elected official in the City of Detroit—have legal standing to initiate a bankruptcy proceeding on behalf of the City of Detroit, a body corporate? A bankruptcy proceeding will alter dramatically the trajectory of the City of Detroit and hundreds of thousands of workers and residents. While it may not be within the Bankruptcy Court's jurisdiction to resolve the dispute surrounding the constitutionality of PA436, ascertaining the constitutionality of PA436 seems prerequisite to determining whether Governor Rick Snyder and his agent Kevyn Orr have the legal right and authority to initiate a bankruptcy proceeding on behalf of the City of Detroit, Michigan. The City of Detroit is defined in law as a body corporate that operates separate and apart from the State of Michigan. As required by the Michigan Home Rule Cities Act, Detroit has a Home Rule Charter and governance structure that includes the requisite checks and balances—specifically, a legislative branch, executive branch and judicial branch.

There are several court actions pending challenging the constitutionality of PA436 and its predecessor legislation. There exists *substantive* and *substantial law* that leads one to conclude that PA436 might be highly unconstitutional on multiple fronts and even threatens to undermine America's republican form of government. PA436, Section 141.1549, gives rise to Emergency Manager powers:

The governor may appoint an emergency manager to address a financial emergency within that local government as provided for in this act.

Upon appointment, an emergency manager shall act for and in the place and stead of the governing body and the office of chief administrative officer of the local government. The emergency manager shall have broad powers in receivership to rectify the financial emergency and to assure the fiscal accountability of the local government and the local government's capacity to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare. Following appointment of an emergency manager and during the pendency of receivership, the governing body and the chief administrative officer of the local government shall not exercise any of the powers of those offices except as may be specifically authorized in writing by the emergency manager or as otherwise provided by this act and are subject to any conditions required by the emergency manager.

The following narratives are presented to aid the Bankruptcy Court in considering whether there is a need to resolve the question pertaining to the constitutionality of PA436 as a prerequisite to determining whether Governor Rick Snyder and EM Kevyn Orr—neither of whom is an elected official in the City of Detroit—have legal standing to initiate a bankruptcy proceeding on behalf of the City of Detroit, a body corporate:

- a) **Except for the law in question (PA436 and its predecessor legislation), there are NO enabling laws or statutes (constitutional, federal, state, or local) that confer upon Michigan's Governor or his agents the authority to replace a city's duly elected executive and legislative body with an emergency manager who can then institute bankruptcy proceedings to correct financial problems that *may exist*.** In fact, numerous laws explicitly prohibit powers afforded the governor by PA436, including the right to appoint an Emergency Manager to "act for and in the place and stead of" duly elected officials. The Michigan Constitution (Section 117.3) of the Home Rule Cities Act states, "Each city charter shall provide for the election of a mayor, who shall be the chief executive officer of the city, and of a body vested with legislative power" It also says "Elections may be by a partisan, nonpartisan, or preferential ballot, or by any other legal method of voting." An EM appointed by the governor does not constitute an election or legal form of voting. Furthermore, clearly the intent of Section 117.3 of the Michigan Home Rule Cities Act is to empower Home Rule City elected officials to govern the Home Rule City pursuant to the city's legally enacted charter.
- b) **Public Act 436 is unconstitutional because it undermines the United States' republican form of government by giving rise to a totalitarian government, with Governor Snyder as the single and sole decision maker.** PA436 violates Section 4 of Article 4 of the U.S. Constitution, which states, "The United States shall guarantee to every State in this Union a Republican Form

of Government”—which is a government that has an executive branch, legislative branch and judicial branch. To ensure a republican form of government throughout the entire U.S. Government, top down, state constitutions contain provisions similar to Section 4 of Article 4 requiring a republican form of government. But PA436 subverts the republican governmental structure by installing one person appointed by the governor to replace the city’s executive and its legislative body. Specifically, PA436 states:

Upon appointment, an emergency manager shall act for and in the place and stead of the governing body and the office of chief administrative officer of the local government.

Following appointment of an emergency manager and during the pendency of receivership, the governing body and the chief administrative officer of the local government shall not exercise any of the powers of those offices except as may be specifically authorized in writing by the emergency manager or as otherwise provided by this act and are subject to any conditions required by the emergency manager.

The EMs appointed by Michigan Governor Snyder “act for in place and stead of the governing body [legislature]) and office of chief administrative office [mayor] of the local government.” PA436 Section 141.1549 reveals that all EMs are appointed by and serve at the discretion and direction of Michigan’s governor. So it is the governor, not the emergency managers, who has ultimate control over all cities in Michigan under the control of an emergency manager. This structure gives rise to a totalitarian form of government headed by Michigan’s Governor Rick Snyder—the person who has sole authority to declare and financial emergency and invoke PA436. As further evidence of the subversion, one only has to project how Michigan’s government structure would appear should the Governor declare a financial emergency in all municipalities across Michigan. By so doing, he would position himself as the sole governing authority in all municipalities throughout the State of Michigan. He would rule over the municipalities through his appointed EMs—his direct reports who would embody the powers of chief executives (mayors) and legislatures (city council). The 1908 Michigan Constitution defines subversion as a criminal offense that constitutes “any act, or advocacy of any act, intended to overthrow the form of government of the United States or the form of government of this state (Michigan) . . . by *force* or *violence* or by any *unlawful means*.”

- c) **The Michigan Constitution assigns the Michigan Governor limited powers of removal. Powers conferred upon the Michigan Governor are defined in Article V of the Michigan Constitution.** Like all elected officials in the United States, Michigan Governor Rick Snyder’s powers are derived from statute and constrained by statute. Those powers include limited removal powers in the case of malfeasance or failure to comply with the State of Michigan’s campaign laws. Municipal charters, such as the Detroit City Charter, also grant the governor limited removal powers. The governor’s power to remove elected officials is constrained by Section

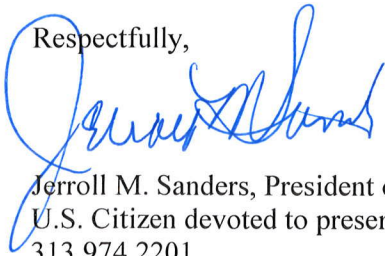
168.321 of Michigan Election Law, which prohibits the governor from removing duly elected local officials from office except for reasons stated in that municipality's charter, the official rules governing the municipality. The Detroit City Charter contains no provisions that empower a governor to remove elected officials or constrain their powers upon alleging the existence of a financial deficit.

In fact, PA436 and its predecessor legislation—the constitutionality of which remains in question—are the only provisions of law in the State of Michigan that permit a duly elected governor to remove other *duly elected officials* or constrain elected officials' statutorily conferred powers simply by alleging the existence of a financial emergency.

The stakes for our American democracy are too high to permit foreigners to Detroit (EM Kevyn Orr and Governor Rick Snyder) to illegally usher the City of Detroit into bankruptcy. I pray the court dismisses the bankruptcy action brought by Governor Snyder and EM Orr pending resolution of the question:

Are PA436 and its predecessor legislation constitutional?

Respectfully,



Jerroll M. Sanders, President of ONUS

U.S. Citizen devoted to preserving America's republican form of government
313.974.2201